

# EXHIBIT 'A'

**CARPENTER LAW GROUP**  
Todd D. Carpenter (CA 234464)  
402 West Broadway, 29th Floor  
San Diego, California 92101  
Telephone: 619.347.3517  
Facsimile: 619.756.6991

**PATTERSON LAW GROUP**  
James R. Patterson (CA 211102)  
402 West Broadway, 29th Floor  
San Diego, California 92101  
Telephone: 619.398.4760  
Facsimile: 619.756.6991

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

RANDY NUNEZ, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

NBTY, INC., a Delaware corporation;  
ARTHRITIS RESEARCH CORP., a  
Delaware Corporation; and NATURE'S  
BOUNTY, INC., a Delaware Corporation,  
Defendants.

Case No. **'13CV0495 MMADHB**

**CLASS ACTION COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR  
COMPETITION LAW, Business and  
Professions Code §17200 *et seq.*;
2. VIOLATION OF THE  
CONSUMERS LEGAL REMEDIES  
ACT,  
Civil Code §1750, *et seq.*; and
3. BREACH OF EXPRESS  
WARRANTY.

**DEMAND FOR JURY TRIAL**

1 Plaintiff RANDY NUNEZ brings this action on behalf of himself and all others  
2 similarly situated against Defendants NBTY, INC., a Delaware corporation; ARTHRITIS  
3 RESEARCH CORP., a Delaware Corporation; and NATURE'S BOUNTY, INC., a  
4 Delaware Corporation, (collectively "Defendants") and states:

### 5 NATURE OF ACTION

6 1. Defendants distribute, market and sell "Flex-a-min", a line of supplements  
7 that purportedly provide a variety of health benefits centered around reducing joint pain,  
8 improving joint comfort, and strengthening or repairing joints. Defendant represents that  
9 the primary active ingredient in its Flex-a-min products is "glucosamine". Through an  
10 extensive and uniform nationwide advertising campaign, Defendants represent that Flex-  
11 a-min will show "improvement in Joint Comfort in 7 Days!," and that it "Eases Joint  
12 Flare-Ups," and "Helps relieve occasional joint stiffness." Other representations claim  
13 that "Joint Flex," a "proprietary blend of beneficial ingredients that promote joint  
14 comfort" is formulated to "Soothe, Cushion, Nourish, Revitalize [and] Support" joints  
15 [referencing an image of a knee joint].

16 2. The statements represented on the Flex-a-min product packaging are  
17 "structure-function" claims which must be limited to a description of the role that a  
18 dietary ingredient is "intended to affect the structure or function in humans." 21 U.S.C. §  
19 343 (r)(6). In order to make a structure-function claim, the dietary supplement  
20 manufacturer is required to have substantiation that such statements are truthful and not  
21 misleading. *Id.*

22 3. Defendants do not have any competent, reliable scientific evidence that  
23 substantiates their representations about the health benefits of consuming Flex-a-min. In  
24 fact, all available scientific evidence demonstrates that the Flex-a-min products have no  
25 efficacy at all, are ineffective in the treatment of joint pain, and provide no joint comfort.  
26 Numerous scientifically valid studies have been conducted on the ingredients, including  
27 the core or primary ingredient in Flex-a-min, glucosamine and they have universally  
28 demonstrated that glucosamine and glucosamine in combination with other ingredients

1 such as chondroitin have absolutely no scientific value in the treatment of joint pain or  
2 discomfort.

3 4. Further, pursuant to 21 C.F.R. § 101.93, Defendants are prohibited from  
4 making “disease claims” about their product. Disease claims are generally described as  
5 statements which claim to diagnose, mitigate, treat, cure or prevent disease where the  
6 statements claim “explicitly or implicitly, that the product...Has an effect on the  
7 characteristic signs or symptoms of a specific disease or class of diseases, using scientific  
8 or lay terminology.” *Id.* Defendants make representations on the product label for the  
9 Flex-a-min products which directly relate to the treatment of Osteoarthritis. The Mayo  
10 Clinic defines symptoms of osteoarthritis as follows:

- 11 • **Pain.** Your joint may hurt during or after movement.
- 12 • **Tenderness.** Your joint may feel tender when you apply light pressure to it.
- 13 • **Stiffness.** Joint stiffness may be most noticeable when you wake up in the morning  
14 or after a period of inactivity.
- 15 • **Loss of flexibility.** You may not be able to move your joint through its full range of  
16 motion.
- 17 • **Grating sensation.** You may hear or feel a grating sensation when you use the joint.
- 18 • **Bone spurs.** These extra bits of bone, which feel like hard lumps, may form around  
19 the affected joint.

20 See <http://www.mayoclinic.com/health/osteoarthritis/DS00019/DSECTION=symptoms>  
21 (last viewed February 21, 2013).

22 5. Defendants represent that the active ingredients in Flex-a-min products  
23 provide relief for nearly all of these symptoms: “Together they provide joint comfort by  
24 helping to lubricate the joint matrix, build strong bones and nourish cartilage and  
25 connective tissues.” See product label, attached as Exhibit “A”. This bold claim is in  
26 addition to the other misrepresentations claiming the product will show improvement in  
27 Joint Comfort in 7 Days, ease joint flare-ups and relieve occasional joint stiffness.  
28 Defendants also represent themselves as a sponsor of the “Arthritis Foundation,”

1 implying that the product has an association with the treatment of arthritis. *See* Exhibit A,  
2 “Proud Sponsor of the Arthritis Foundation”. These statements and representations are  
3 present on every product label for the Defendants’ Flex-a-min product. Taken together,  
4 these statements explicitly and implicitly represent that Flex-a-min is intended to prevent,  
5 treat, or otherwise cure symptoms associated with Osteoarthritis.

6 6. Defendants did not obtain the requisite New Drug Application prior to  
7 marketing and selling its Flex-a-min product. As such, making these statements and  
8 representations without a New Drug Application (“NDA”) approval from the FDA  
9 constitute misbranding and false and misleading conduct pursuant to 21 C.F.R. § 101.93.

10 7. , Defendants convey their uniform, deceptive message to consumers through  
11 a variety of media including their website and online promotional materials, and, most  
12 important, at the point of purchase, on the front of the Products’ packaging/labeling where  
13 it cannot be missed by consumers. The only reason a consumer would purchase Flex-a-  
14 min is to obtain the advertised joint-health benefits, which the Flex-a-min products do not  
15 provide.

16 8. As a result of Defendants’ deceptive advertising and false claims regarding  
17 the efficacy of the Flex-a-min product, Plaintiff and the proposed class have purchased a  
18 product which does not perform as represented and they have been harmed in the amount  
19 they paid for the product, which, in the case of Plaintiff Nunez is approximately \$40.00  
20 per bottle.

21 9. Plaintiff brings this action on behalf of himself and other similarly situated  
22 consumers who have purchased Defendants’ Flex-a-min products to halt the  
23 dissemination of this false, misleading and deceptive advertising message, correct the  
24 false and misleading perception it has created in the minds of consumers, and obtain  
25 redress for those who have purchased these Products. Based on violations of state unfair  
26 competition laws and Defendants’ breach of express warranty, Plaintiff seeks injunctive  
27 and monetary relief for consumers who purchased the Flex-a-min products.

28 ///

## JURISDICTION AND VENUE

10. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and many members of the Class are citizens of a state different from Defendants.

11. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in California. Defendants have marketed, promoted, distributed, and sold the Flex-a-min product in California and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

12. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while she resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendants transact substantial business in this District.

## PARTIES

13. Plaintiff Randy Nunez resides in San Diego, California. In or around August of 2012, Plaintiff was exposed to and saw Defendants' representations regarding the joint health benefits of Flex-a-min by reading the Flex-a-min product label in an Albertson's grocery store near his home in downtown San Diego. In reliance on the claim that Flex-a-min would "show improvement in Joint Comfort in 7 Days" and the other representations made on the product packaging as described herein, Plaintiff purchased the Flex-a-min Triple Strength Glucosamine Chondroitin formula with Joint Flex Plus Vitamin D3 200 IU + MSM at an Albertson's grocery store located at 655 14<sup>th</sup> Street, San Diego, California 92101. He paid approximately \$40.00 for the product. At the time, Mr. Nunez was engaged in a rigorous physical fitness regimen. He purchased the product believing it would provide the advertised joint health benefits and improve his joint soreness and comfort. The Flex-a-min product Plaintiff purchased did not provide the comfort it

1 represented and did not provide any Joint Comfort within 7 days as advertised. As a  
2 result, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth  
3 about Defendants' misrepresentations and omissions, he would not have purchased the  
4 Flex-a-min product.

5 14. Defendant NBTY, Inc. ("NBTY") is a corporation organized and existing  
6 under the laws of the state of Delaware. NBTY's headquarters is at 2100 Smithtown Ave.,  
7 Ronkonkoma, New York 11779. NBTY manufactures, advertises markets, distributes,  
8 and/or sells the Flex-a-min products to tens of thousands of consumers in California and  
9 throughout the United States.

10 15. Defendant Arthritis Research Corp. ("Arthritis Research") is a corporation  
11 organized and existing under the laws of the state of Delaware. Arthritis Research is a  
12 subsidiary of NBTY. Arthritis Research is headquartered is at 110 Orville Drive,  
13 Bohemia, New York 11716. Arthritis Research manufactures, advertises, markets,  
14 distributes, and/or sells the Flex-a-min products to tens of thousands of consumers in  
15 California and throughout the United States.

16 16. Defendant Nature's Bounty, Inc. ("Nature's Bounty") is a corporation  
17 organized and existing under the laws of the state of Delaware. Nature's Bounty is a  
18 subsidiary of NBTY. Nature's Bounty is headquartered is at 110 Orville Drive, Bohemia,  
19 New York 11716. Nature's Bounty manufactures, advertises, markets, distributes, and/or  
20 sells the Flex-a-min products to tens of thousands of consumers in California and  
21 throughout the United States.

22 17. Plaintiff is informed and believes, and thus alleges, that at all times herein  
23 mentioned, each of the Defendants was the agent, employee, representative, partner, joint  
24 venturer, and/or alter ego of the other Defendant and, in doing the things alleged herein,  
25 was acting within the course and scope of such agency, employment, representation, on  
26 behalf of such partnership or joint venture, and/or as such alter ego, with the authority,  
27 permission, consent, and/or ratification of the other Defendant.

28 ///



## FACTUAL ALLEGATIONS

### *The FLEX-A-MIN Glucosamine Chondroitin products*

18. Since the early part of the century, Defendants have distributed, marketed and sold the Flex-a-min product on a nation-wide basis. The Flex-a-min product is sold at a variety of grocery chains and low cost retailers, including Wal-Mart, CVS, Walgreens, and Albertson's. The Flex-a-min product is available in a variety of sized bottles from 60 count all the way up to 180 count. Plaintiff purchased a 120 count bottle for approximately \$40.00. The Flex-a-min line of products includes: (1) Flex-a-min Triple Strength Bone Shield; (2) Flex-a-min Double Strength; (3) Flex-a-min Triple Strength Joint Flex Formula with Aflapin™; (4) Flex-a-min Super Glucosamine 2000 Plus; and (5) Flex-a-min Triple Strength with Hyaluronic Acid (collectively, "Flex-a-min" or "the Products"). The products are indistinguishable from an "efficacy" standpoint as Plaintiff alleges that the core ingredients in the products are virtually identical and that the products are each completely inefficacious.

19. The primary active ingredient in the Flex-a-min product is Glucosamine. It is the inclusion or prevalence of this ingredient from which Defendant generates all of its joint-health related claims. Since the inception of the Flex-a-min product line, Defendants have consistently advertised Flex-a-min as, "improving joint comfort," "lubricating" cartilage, and "support[ing] and/or nourish[ing] cartilage. As more fully set forth herein, the scientific evidence regarding the use of glucosamine, taken alone or in combination with other ingredients, does not provide any of the joint health benefits represented by Defendants.

20. Since launching the Flex-a-min product, Defendants have consistently conveyed the message to consumers throughout the United States, including California, that the Flex-a-min product provides superior joint comfort on an expedited basis – within 7 days compared to other Glucosamine Chondroitin products. It does not. Defendants' superior joint comfort claims are false, misleading and deceptive; not only do they not provide the advertised benefit within 7 days, they provide no benefit at all.



1        21. In addition to glucosamine, which Defendants prominently promotes as being  
2 the primary active ingredient that provides the purported joint health benefits,  
3 Defendants's Flex-a-min products contain smaller amounts of other purported ingredients,  
4 including: chondroitin sulfate; methylsulfonylmethane ("MSM"); hyaluronic acid; and  
5 Aflapin (Boswellia Serrata). As more fully discussed below, these minor ingredients are  
6 also not effective in providing the joint health benefits represented by Defendants, but in  
7 any event the focus of this action is on the uniform false and deceptive representations and  
8 omissions that Defendants makes about glucosamine on the package labeling of each of  
9 the Flex-a-min products.

10        22. Even though numerous clinical studies have found that the primary  
11 ingredient in Defendants' Flex-a-min products, glucosamine, alone or in combination with  
12 chondroitin and other supplements, is ineffective, Defendants continue to state on the  
13 Products' packaging and labeling that Flex-a-min helps to, inter alia: to support/nourish  
14 cartilage, "lubricate" joints and improve "joint comfort" without any limitation on which  
15 joints, for adults of all ages and without any limitation on what stages of joint related  
16 ailments. Front, back, and side shots of a representative Flex-a-min Triple Strength with  
17 Joint Flex label appear as follows:

18  
19  
20  
21  
22  
23  
24  
25  
26 ///

27  
28 ///

Front Product Label:



Side Product Label:



///

///

///

## Back Product Label

Directions: For adults, take two (2) tablets daily, preferably with a meal. Take this product with plenty of fluids. For best results, take the full dosage of Flex-a-min daily, on a continual basis.

**Supplement Facts**

Serving Size 2 Tablets  
Servings Per Container 30

Amount Per Serving		%Daily Value
Calories	10	
Total Carbohydrate	2 g	1%**
Vitamin D (as D3 Cholecalciferol)	2,000 IU	500%
Sodium	40 mg	2%
Glucosamine HCl	1,500 mg (1.5 g)	***
Flex-a-min® Joint Flex™ Proprietary Blend	1,310 mg (1.3 g)	***
Chondroitin Sulfate Complex	1,210 mg (1.2 g)	***
(Chondroitin Sulfate, Collagen (Hydrolyzed Gelatin), Citrus Bioflavonoids, MSM (Methylsulfonylmethane), Boswellia serrata (resin), Silica, Hyaluronic Acid (as Sodium Hyaluronate))		
Allapin™ Boswellia serrata Extract (resin)	100 mg	***

\*\*Percent Daily Values are based on a 2,000 calorie diet.  
\*\*\*Daily Value not established.

Other Ingredients: Vegetable Cellulose Powder, Contains <2% of: Natural Caramel, Color, Titanium Dioxide, Color, Vegetable Magnesium Stearate, Contains shellfish (shrimp, crab, lobster) and fish (salmon) oils.

No Artificial Flavor or Sweetener, No Preservatives, No Sugar, No Milk, No Lactose, No Soy, No Gluten, No Wheat, No Yeast

**WARNING:** If you are pregnant, nursing or taking any medications, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18. Keep out of reach of children. Store in a cool, dry place. Do not use if seal under cap is broken or missing.

Useful Hint:

1. In a statement is given that with other studies of Flex-a-min, some individuals measure a variety of changes to their joints. While these studies show that improvement continues to be seen, including in both pain and mobility.

Flex-a-min is a trademark of Arthritis Research Corp. Patent pending.



Visit Us On the Web: [www.flexamin.com](http://www.flexamin.com)  
For More Information on Flex-a-min Call 1-800-255-5499

Formulated and Manufactured by

Arthritis Research Corp.

Bethesda, MD 20814 • Arthritis Research Corp. © 2010

\*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

## Side Product Label

NATURE'S BOUNTY

**Flex-a-min**

**TRIPLE STRENGTH**

GLUCOSAMINE CHONDROITIN FORMULA

**Plus**

with **JOINT FLEX™**

**VITAMIN D3 2000 IU + MSM**

Joint Flex™ is a proprietary blend of beneficial ingredients that promote joint comfort.\*

**JOINT FLEX™ Formulated to\*:**

- SOOTHE
- CUSHION
- NOURISH
- REVITALIZE
- SUPPORT



23. Plaintiff and Class members have been and will continue to be deceived or misled by Defendants' deceptive joint health benefit claims. Plaintiff purchased consumed Flex-a-min during the Class period and in doing so, read and considered the joint health benefit representations on the Flex-a-min product label and based his decision to purchase the Flex-a-min product based on the joint health benefit claims and specifically on the representation that it would provide benefits faster than other brands, including "within 7 days". Defendants' joint health benefit claims were a material factor in influencing Plaintiff's decision to purchase and use Flex-a-min. Plaintiff would not have purchased Flex-a-min had he known that the Product does not provide the represented joint comfort.

24. Independent scientific studies confirm that the representations made on the Flex-a-min product label, relied upon by Plaintiff in making his purchase, are false and misleading. Despite knowledge of these studies, Defendant continued to make the described representations, misleading Plaintiff and members of the class into believing the Flex-a-min product had actual efficacy and would provide the benefits described in its advertising.

25. Defendants knew or should have known that glucosamine alone and taken in combination with the other ingredients present in Flex-a-min have no actual medicinal value and do not provide any of the warranted benefits as represented by Defendant's Flex-a-min products' labels. In fact, there is no scientific study demonstrating that any glucosamine product can regenerate cartilage. To the contrary, as numerous studies have confirmed, neither glucosamine, chondroitin, or any other supplements or ingredients actually regenerate cartilage or provide joint comfort or relief from pain:

26. In February 2004, a Supplement to the American Journal of Orthopedics published an article entitled "Restoring Articular Cartilage in the Knee." The authors concluded that adult cartilage cannot be regenerated because it is not vascularized, meaning that blood does not flow to damaged cartilage which prevents any mechanism for regeneration.

1        27. In February 2006, the New England Journal of Medicine published a report  
2 on a double blind study addressing in part the efficacy of ingesting glucosamine  
3 hydrochloride 1500mg. *Clegg, et al.* Glucosamine Chondroitin Sulfate, and the Two in  
4 Combination for Painful Knee Osteoarthritis. New Eng. J. Med. 354:795-808 (Feb. 2006).  
5 The study concluded that there was no showing that the supplement was effective in  
6 treating osteoarthritis.

7        28. In February 2008, the Annals of Internal Medicine published a study entitled,  
8 "Effect of Glucosamine Sulfate on Hip Osteoarthritis: a Randomized Trial." Annals of  
9 Internal Medicine 2008 Feb 19;148(4): 268-277. The article published the results of a  
10 study which examined whether glucosamine sulfate has an effect on the symptoms and  
11 structural progression of hip osteoarthritis during two years of treatment; the conclusion  
12 reached from the study was that glucosamine sulfate was no better than placebo in  
13 reducing symptoms and progression of hip osteoarthritis.

14        29. In October 2008, the American College of Rheumatology's Journal, Arthritis  
15 & Rheumatism published a report on a double blind study conducted at multiple centers in  
16 the United States examining joint space width loss with radiograph films in patients who  
17 were treated with glucosamine hydrochloride. The authors concluded that after two years  
18 of treatment with this supplement, the treatment did not demonstrate a clinically important  
19 difference in joint space width loss. Sawitzke et al., Glucosamine for Pain in  
20 Osteoarthritis: Why do Trial Results Differ?, Arthritis Rheum., 58:3183-3191 (2008).

21        30. In March 2009, Harvard Medical School published a study conclusively  
22 proving that the ingestion of glucosamine could not affect the growth of cartilage. The  
23 study took note of the foregoing 2006 and 2008 studies, which "cast considerable doubt"  
24 upon the value of glucosamine. The authors went on to conduct an independent study of  
25 subjects ingesting 1500 mg of glucosamine, and proved that only trace amounts of  
26 glucosamine entered the human serum, far below any amount that could possibly affect  
27 cartilage. Moreover, even those trace amounts were present only for a few hours after  
28 ingestion. The authors noted that a 1986 study had found no glucosamine in human

1 plasma after ingestion of four times the usual 1500 mg of glucosamine chloride or  
2 sulphate. Silbert, Dietary Glucosamine Under Question, Glycobiology 19(6):564-567  
3 (2009).

4 31. In April 2009, the Journal of Orthopedic Surgery published an article  
5 entitled, "Review Article: Glucosamine." The article's authors concluded that, based on  
6 their literature review, there was "little or no evidence" to suggest that glucosamine was  
7 superior to a placebo even in slowing down cartilage deterioration, much less regenerating  
8 it. Kirkham, et al., Review Article: Glucosamine, Journal of Orthopedic Surgery, 17(1):  
9 72-6 (2009).

10 32. In October 2008, the journal Arthritis and Rheumatism published an article  
11 entitled, "The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of  
12 Knee Osteoarthritis." The authors reported on the results of a 24-month, double-blind,  
13 placebo-controlled study, which demonstrated that there were no statistically significant  
14 differences in progressive loss of joint space width for subjects taking glucosamine and  
15 chondroitin versus placebos. Sawitzke, et al., The Effect of Glucosamine and/or  
16 Chondroitin Sulfate on the Progression of Knee Osteoarthritis, Arthritis and Rheumatism,  
17 58(10): 3183-3191 (2008).

18 33. In June 2011, the Journal of Pharmacy & Pharmaceutical Sciences published  
19 an article entitled, "The Glucosamine Controversy; A Pharmacokinetic Issue." The  
20 authors concluded that regardless of the formulation used, no or marginal beneficial  
21 effects were observed as a result of low glucosamine bioavailability. Aghazadeh-Habashi  
22 and Jamali, The Glucosamine Controversy; A Pharmacokinetic Issue, Journal of  
23 Pharmacy & Pharmaceutical Sciences, 14(2): 264-273 (2011).

24 34. To date, there are only two studies, both of which are more than a decade old,  
25 purporting to claim that the ingestion of glucosamine can affect the growth or  
26 deterioration of cartilage, both sponsored by a glucosamine supplement manufacturer:  
27 Pavelka et. al. Glucosamine Sulfate Use and Delay of Progression of Knee Osteoarthritis,  
28 Arch. Intern. Med., 162: 2113-2123 (2002); Reginster et. al. Long-term Effects of



1 Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled  
2 Clinical Trial, Lancet, 357: 251-6 (2001). As noted in the April 2009 Journal of  
3 Orthopedic Surgery article, the methodologies in those studies had "inherently poor  
4 reproducibility," and even minor changes in posture by the subjects during scans could  
5 cause false apparent changes in cartilage. The authors of the Journal of Orthopedic  
6 Surgery article explained the manufacturer-sponsored studies' findings by noting that  
7 "industry-sponsored trials report positive effects more often than do non-sponsored trials  
8 and more find pro-industry results." No reliable scientific medical study has shown that  
9 glucosamine and chondroitin, alone or in combination, have a structure modifying effect  
10 that will regenerate cartilage that has broken down or worn away.

11 35. As a result, Plaintiff and the Class members have been damaged by their  
12 purchases of the Flex-a-min product and have been deceived into purchasing Products that  
13 they believed, based on Defendants' representations, provided joint health benefits and  
14 overall joint comfort within 7 days, when, in fact, they do not.

15 36. Defendants have reaped enormous profits from their false marketing and sale  
16 of the Flex-a-min products.

### 17 CLASS DEFINITION AND ALLEGATIONS

18 37. Plaintiff brings this action on behalf of herself and all other similarly situated  
19 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil  
20 Procedure and seeks certification of the following Class against Defendants for violations  
21 of California state laws and/or similar laws in other states:

#### 22 **Multi-State Class Action**

23 All consumers who purchased a Flex-a-min product, within the  
24 applicable statute of limitations, in the United States for  
personal use until the date notice is disseminated.

25 Excluded from this Class are Defendants and their officers,  
26 directors and employees, and those who purchased a Flex-a-min  
product for the purpose of resale.



38. In the alternative, Plaintiff brings this action on behalf of himself and all other similarly situated California consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

**California-Only Class Action**

All California consumers who purchased a Flex-a-min product, within the applicable statute of limitations, for personal use until the date notice is disseminated.

Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased a Flex-a-min product for the purpose of resale.

39. *Numerosity.* The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Flex-a-min products who have been damaged by Defendants' conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

40. *Existence and Predominance of Common Questions of Law and Fact.* This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- (b) whether Defendants' alleged conduct violates public policy;
- (c) whether the alleged conduct constitutes violations of the laws asserted;
- (d) whether Defendants engaged in false or misleading advertising;
- (e) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- (f) whether Plaintiff and Class members are entitled to other appropriate remedies, including corrective advertising and injunctive relief.

1           41. **Typicality.** Plaintiff's claims are typical of the claims of the members of the  
2 Class because, *inter alia*, all Class members were injured through the uniform misconduct  
3 described above and were subject to Defendants' deceptive joint health benefit claims that  
4 accompanied each and every Flex-a-min product Defendant sold. Plaintiff is advancing  
5 the same claims and legal theories on behalf of himself and all members of the Class.

6           42. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the  
7 interests of the members of the Class. Plaintiff has retained counsel experienced in  
8 complex consumer class action litigation, and Plaintiff intends to prosecute this action  
9 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

10           43. **Superiority.** A class action is superior to all other available means for the  
11 fair and efficient adjudication of this controversy. The damages or other financial  
12 detriment suffered by individual Class members is relatively small compared to the  
13 burden and expense that would be entailed by individual litigation of their claims against  
14 Defendants. It would thus be virtually impossible for Plaintiff and Class members, on an  
15 individual basis, to obtain effective redress for the wrongs done to them. Furthermore,  
16 even if Class members could afford such individualized litigation, the court system could  
17 not. Individualized litigation would create the danger of inconsistent or contradictory  
18 judgments arising from the same set of facts. Individualized litigation would also increase  
19 the delay and expense to all parties and the court system from the issues raised by this  
20 action. By contrast, the class action device provides the benefits of adjudication of these  
21 issues in a single proceeding, economies of scale, and comprehensive supervision by a  
22 single court, and presents no unusual management difficulties under the circumstances  
23 here.

24           44. The Class also may be certified because Defendants have acted or refused to  
25 act on grounds generally applicable to the Class thereby making appropriate final  
26 declaratory and/or injunctive relief with respect to the members of the Class as a whole.

27           45. Plaintiff seeks preliminary and permanent injunctive and equitable relief on  
28 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin

1 and prevent Defendants from engaging in the acts described, and requiring Defendants to  
2 provide full restitution to Plaintiff and Class members.

3 46. Unless a Class is certified, Defendants will retain monies received as a result  
4 of their conduct that were taken from Plaintiff and Class members. Unless a Class-wide  
5 injunction is issued, Defendants will continue to commit the violations alleged, and the  
6 members of the Class and the general public will continue to be misled.

7  
8 **COUNT I**  
**Violation of Business & Professions Code §17200, et seq.**

9 47. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
10 above, as if fully set forth herein.

11 48. Plaintiff brings this claim individually and on behalf of the Class.

12 49. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
13 property as a result of Defendants' conduct because he purchased a Flex-a-min product in  
14 reliance on Defendants' joint-health benefit claims, including *inter alia*, that the Flex-a-  
15 min product:

- 16 • "Shows improvement in Joint Comfort in 7 days;"
- 17 • "Eases Joint Flare-ups;"
- 18 • "Helps Relieve Occasional Joint Stiffness;"
- 19 • "...provide joint comfort by helping to lubricate the joint matrix, build strong  
20 bones and nourish cartilage and connective tissue;" and
- 21 • [Is] "Formulated to "Soothe," "Cushion," "Nourish," "Revitalize," and  
22 "Support" –in reference to a graphic of a knee joint.

23 but did not receive a Product that provided any joint comfort at all, and provided no  
24 comfort within the proscribed 7 day period. .

25 50. The Unfair Competition Law, Business & Professions Code §17200, et seq.  
26 ("UCL"), and similar laws in other states, prohibit any "unlawful," "fraudulent" or  
27 "unfair" business act or practice and any false or misleading advertising. In the course of  
28 conducting business, Defendants committed unlawful business practices by, *inter alia*,

1 making the above referenced claims in paragraph 49 and as alleged throughout herein  
2 (which also constitutes advertising within the meaning of §17200) and omissions of  
3 material facts related to the numerous scientific studies which demonstrate no joint-health  
4 benefits derived from the consumption of the ingredients present in Flex-a-min, and  
5 violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code  
6 §§17200, et seq., 17500, et seq., and the common law.

7 51. Plaintiff and the Class reserve the right to allege other violations of law,  
8 which constitute other unlawful business acts or practices. Such conduct is ongoing and  
9 continues to this date.

10 52. Defendants' actions also constitute "unfair" business acts or practices  
11 because, as alleged above, *inter alia*, Defendants engaged in false advertising,  
12 misrepresented and omitted material facts regarding the Flex-a-min product, and thereby  
13 offended an established public policy, and engaged in immoral, unethical, oppressive, and  
14 unscrupulous activities that are substantially injurious to consumers.

15 53. As stated in this Complaint, Plaintiff alleges violations of consumer  
16 protection, unfair competition and truth in advertising laws in California and other states,  
17 resulting in harm to consumers. Defendants' acts and omissions also violate and offend  
18 the public policy against engaging in false and misleading advertising, unfair competition  
19 and deceptive conduct towards consumers. This conduct constitutes violations of the  
20 unfair prong of Business & Professions Code §17200, et seq.

21 54. There were reasonably available alternatives to further Defendants'  
22 legitimate business interests, other than the conduct described herein.

23 55. Business & Professions Code §17200, et seq. also prohibits any "fraudulent  
24 business act or practice."

25 56. Defendants' actions, claims, nondisclosures and misleading statements, as  
26 more fully set forth above, were also false, misleading and/or likely to deceive the  
27 consuming public within the meaning of Business & Professions Code §17200, et seq.  
28

1 57. Plaintiff and other members of the Class have in fact been deceived as a  
2 result of their reliance on Defendants' material representations and omissions, which are  
3 described above. This reliance has caused harm to Plaintiff and other members of the  
4 Class who each purchased a Flex-a-min product. Plaintiff and the other Class members  
5 have suffered injury in fact and lost money as a result of these unlawful, unfair, and  
6 fraudulent practices.

7 58. As a result of their deception, Defendants have been able to reap unjust  
8 revenue and profit.

9 59. Unless restrained and enjoined, Defendants will continue to engage in the  
10 above-described conduct. Accordingly, injunctive relief is appropriate.

11 60. Plaintiff, on behalf of himself, all others similarly situated, and the general  
12 public, seeks restitution and disgorgement of all money obtained from Plaintiff and the  
13 members of the Class collected as a result of unfair competition, an injunction prohibiting  
14 Defendants from continuing such practices, corrective advertising and all other relief this  
15 Court deems appropriate, consistent with Business & Professions Code §17203.

16  
17 **COUNT II**  
18 **Violations of the Consumers Legal Remedies Act –**  
19 **Civil Code §1750 *et seq.***

20 61. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
21 above, as if fully set forth herein.

22 62. Plaintiff brings this claim individually and on behalf of the Class.

23 63. This cause of action is brought pursuant to the Consumers Legal Remedies  
24 Act, California Civil Code §1750, *et seq.* (the "Act") and similar laws in other states.  
25 Plaintiff is a "consumer" as defined by California Civil Code §1761(d). The Products in  
26 the Flex-a-min line of glucosamine chondroitin products are "goods" within the meaning  
27 of the Act.

28 64. Defendants violated and continue to violate the Act by engaging in the  
following practices proscribed by California Civil Code §1770(a) in transactions with

1 Plaintiff and the Class which were intended to result in, and did result in, the sale of the  
2 Flex-a-min products:

3 (5) Representing that [the Products] have . . . approval, characteristics, . . . uses  
4 [and] benefits . . . which [they do] not have . . . .

5 \* \* \*

6 (7) Representing that [the Products] are of a particular standard, quality or  
7 grade . . . if [they are] of another.

8 \* \* \*

9 (9) Advertising goods . . . with intent not to sell them as advertised.

10 \* \* \*

11 (16) Representing that [the Products have] been supplied in accordance with a  
12 previous representation when [they have] not.

13 65. Defendants violated the Act by representing and failing to disclose material  
14 facts on the Flex-a-min labeling and packaging and associated advertising, as described  
15 above, when they knew, or should have known, that the representations were false and  
16 misleading and that the omissions were of material facts they were obligated to disclose.

17 66. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order  
18 enjoining the above-described wrongful acts and practices of Defendants and for  
19 restitution and disgorgement.

20 67. Pursuant to §1782 of the Act, Plaintiff notified Defendants in writing by  
21 certified mail of the particular violations of §1770 of the Act and demanded that  
22 Defendants rectify the problems associated with the actions detailed above and give notice  
23 to all affected consumers of Defendants' intent to so act. Copies of the letters are attached  
24 hereto as Exhibit B.

25 68. If Defendants fail to rectify or agree to rectify the problems associated with  
26 the actions detailed above and give notice to all affected consumers within 30 days of the  
27 date of written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to  
28 add claims for actual, punitive and statutory damages, as appropriate.



69. Defendants' conduct is fraudulent, wanton and malicious.

70. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit showing that this action has been commenced in the proper forum.

**COUNT III**  
**Breach of Express Warranty**

71. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

72. Plaintiff brings this claim individually and on behalf of the Class.

73. The Uniform Commercial Code section 2-313 provides that an affirmation of fact or promise, including a description of the goods, becomes part of the basis of the bargain and creates an express warranty that the goods shall conform to the promise and to the description.

74. At all times, California and other states have codified and adopted the provisions in the Uniform Commercial Code governing the express warranty of merchantability.

75. As discussed above, Defendants expressly warranted on each and every Product label of the Flex-a-min products that the product lived up to the represented joint-health benefits described herein and listed on the product labels. The joint-health benefit claims made by Defendants are affirmations of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promise. Plaintiff placed importance on Defendants' representations.

76. All conditions precedent to Defendants' liability under this contract have been performed by Plaintiff and the Class.

77. Defendants were provided notice of these issues by, *inter alia*, the instant Complaint.

78. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a Product that provided joint



1 comfort and/or easing joint flare-ups and/or relieving occasional joint stiffness as  
2 represented.

3 79. As a result of Defendants' breach of their contract, Plaintiff and the Class  
4 have been damaged in the amount of the price of the Products they purchased.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for a judgment:

7 A. Certifying the Class as requested herein;

8 B. Awarding Plaintiff and the proposed Class members damages;

9 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff  
10 and the proposed Class members;

11 D. Awarding declaratory and injunctive relief as permitted by law or equity,  
12 including: enjoining Defendants from continuing the unlawful practices as set forth  
13 herein, and directing Defendants to identify, with Court supervision, victims of their  
14 conduct and pay them all money they are required to pay;

15 E. Ordering Defendants to engage in a corrective advertising campaign;

16 F. Awarding attorneys' fees and costs;

17 G. Providing such further relief as may be just and proper.  
18  
19  
20  
21  
22  
23  
24  
25

26 ///

27 ///

28 ///

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: March 1, 2013

**CARPENTER LAW GROUP**

By: /s/ Todd D. Carpenter

Todd D. Carpenter (CA 234464)  
402 West Broadway, 29th Floor  
San Diego, California 92101  
Telephone: 619.347.3517  
Facsimile: 619.756.6991

**PATTERSON LAW GROUP**  
James R. Patterson (CA 211102)  
402 West Broadway, 29th Floor  
San Diego, California 92101  
Telephone: 619.398.4760  
Facsimile: 619.756.6991

Attorneys for Plaintiff